

## Remarks

### Claim rejections 35 USC § 103

In Applicants' last response, the claims were amended to specify a telephony device and a telephony session, and it is noted that the most recent office action recognizes that:

- Schuster's device is not a telephony device
- Schuster's test packets are not transmitted while a telephony session is in progress
- Schuster does not disclose providing a dynamic indication of network performance on the telephony device while a telephony session is in progress.

The office action relies on Evslin (US 6,842,427) as a secondary reference to remedy these shortcomings. Clearly, Evslin can only render the invention obvious in combination with Schuster if it supplies the missing telephony device, test packet transmission during a telephony session, and the provision at said telephony device of a dynamic indication of the network performance based on said calculation during said telecommunications session.

#### *Meaning of "a telephony device"*

In considering whether Evslin does disclose a telephony device within the meaning of the claims, the Examiner is asked to bear in mind the following wording of claim 1: "said endpoint is **a telephony device having an interface which is accessible by a user to enable said user to participate in a telephony session** over the network".

Contrast this with Evslin, which discloses call simulators which are co-located with network routers, and which are able to transmit test packets which appear to be voice packets to routers on the network (col. 3, lines 15-27). These simulators can test various routes across the network between specified routers. The results of such testing can be displayed on a screen within a graphical user interface. This is

used by the system designer, or network engineers, to "instruct the appropriate routers and gateways regarding the routing of packets through the network." This call simulator is not an endpoint i.e. a telephony device having an interface which is accessible by a user to enable said user to participate in a telephony session. Instead, like the former secondary reference of McKee, it is a network testing apparatus for use by the engineers and designers.

#### *Meaning of "a telephony session"*

In understanding what is meant by a telephony session, Applicants refer the Examiner to the same wording as was quoted above, which specifies that the telephony session is something that a user participates in from an endpoint. The plain meaning of the words suggests that this is the normal interaction of a user (telephone subscriber) in making a call or other session, whether voice or video, over the network. The Application does not suggest any other unusual meaning for the words, and so the words "telephony session should be given their normal meaning in the art. A transmission of test packets from router to router is not a telephony session in which a normal user of the network participates from a telephony device.

Secondly, the claim also specifies the step of "transmitting test packets across the network **while a telephony session including said telephony device is in progress** across the network". In other words the claim requires doing a certain Action (namely transmitting test packets) while a certain Event (namely a telephony session) is in progress. This plainly means that the Event must be occurring independently of the Action, or more precisely, the Action and the Event cannot be the same thing. There must be a session as well as the test packets.

Yet the office action suggests that the transmission of test voice packets is both the Action and the Event, i.e. the test packets are the telephony session. Logically this interpretation is in conflict with what the claim plainly says, namely that when one transmits the test packets, there is already a telephony session in progress. Accordingly, the test packets cannot themselves constitute the session, and for this additional reason, Evslin does not have the required telephony session.

The meaning of *"providing a dynamic indication of network performance on the telephony device while a telephony session is in progress"*

It is again stressed that the claim wording needs to be compared to the prior art. This feature states that while there is a telephony session (not provided for in either Schuster or Evslin) in progress, one must provide a dynamic indication of network performance on the telephony device. Evslin's display on a piece of equipment which is co-located with a router, in the absence of any telephony session in progress, does not fulfil this limitation.

As previously pointed out, this distinction is not trivial, since real value and utility is added by providing a user, who is engaged in an actual telephony session from a useful, working telephony device, with an indication of quality of service, not taught in the prior art.

## **Summary**

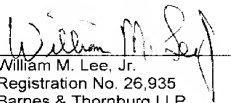
In other words, the shortcoming of Schuster, which is that it is a network testing tool for use by engineers and system designers, is replicated in Evslin, which is also a network testing tool for engineers and system designers. Therefore, the missing limitations of the "telephony device", the "telephony session", and the provision of the "dynamic indication of network performance on the telephony device while a telephony session is in progress", are lacking from both references and cannot therefore be supplied by any combination of these references.

The same arguments hold true for each of the other claims under rejection, which all specify the same or equivalent features to those argued for above.

In view of the arguments made herein, the applicants respectfully request the examiner withdraw the rejections, and allow the application.

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Respectfully submitted,

A handwritten signature in dark ink, appearing to read "William M. Lee, Jr.", is written over a horizontal line.

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